

REMARKS

Upon entry of the amendments herein, claims 1-6, 8-20 and 24-37 remain pending in the application. Claims 1, 32 and 33 have been amended herein. No new matter has been introduced by any of these amendments. Of the pending claims, 12-20, 24-31, and 35-37 currently stand withdrawn pending the possibility of rejoining following agreement as to allowable subject matter in the claims now being considered by the Examiner.

Applicants acknowledge the Examiner's withdrawal of a number of the previous grounds of rejection.

The rejection of claim 33 under 35 U.S.C. §101 has been maintained, however, for the reasons set forth in the previous Action. The amendment herein to the claim renders moot this rejection.

Claim 32, and claim 33 dependent therefrom, stand newly rejected as indefinite, because claim 32 depends from a previously canceled claim. The amendment herein of claim 32 renders moot this rejection.

The rejection of claims 1-6, 8-11 and 32-34 as not complying with the written description requirement has also been maintained. Claim 1 has been amended herein in direct response to the maintaining of this rejection.

Applicants thank the Examiner for taking some pains to clarify the reasons that this rejection was originally leveled and the reasons it was maintained in the present Action. The Examiner states: "In fact, the whole point of the rejection is that the structural and functional relationship between the claimed genus of the nucleic acid [sic] and their function is missing." In response to this clarification, Applicants have amended claim 1 by the addition of language reciting what, in the Examiner's words, "is the unifying function that all those

fragments and variants must share." Support for the added language can be found in the specification in, for example, the passage running from page 6, line 22 through page 7, line 9.

The amendment herein of claim 1 complies with the criteria for acceptability of amendments after final rejection. The amendment is directly responsive to the Examiner's stated basis for rejection, and adequate support is clearly seen in the specification; thus, it cannot be said that new issues are raised. The amendment also removes issues for consideration on appeal. With regard to the required showing under 35 C.F.R. §1.116(b) (3), Applicants wish to point out that the amendment is necessary to address the Examiner's (now) clearly stated reasons for rejection. The amendment was not previously presented because the Examiner's original stated reasons for leveling the rejection were not understood so clearly by Applicants. The Examiner is also reminded that her sole stated reason for making the present rejection final was an informality that was inadvertently introduced by Applicants via a previous amendment and which necessitated a new ground of rejection. It is respectfully requested that the Examiner take this, and the elimination of the informality by amendment herein, into account in considering the acceptability of the amendments herein for entry after final rejection. Entry and consideration of all the amended claims is warranted and respectfully requested.

In view of the amendments and showing presented herein, all of the remaining outstanding issues have been addressed. The amendments meet all of the requirements for amendments acceptable after final rejection. Accordingly, the application is in condition for allowance; reconsideration and allowance of the application with elected claims 1-6, 8-11 and 32-34 are respectfully requested. It is also respectfully requested that at least some or all of the method claims be rejoined to the

allowable composition claims and also allowed; any claims that are not rejoined will be canceled by Applicants. It is requested that the Examiner contact the undersigned in this regard prior to the mailing of another Office Action. Should any other matters require attention prior to allowance, it is also requested that the Examiner contact the undersigned.

No fees should be due in connection with this communication. However, should it be determined that a fee is required for any reason, the Commissioner is hereby authorized to charge it to Deposit Account No. 23-1703.

Dated: January 25, 2008

Respectfully submitted,



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